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June 7, 2007

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

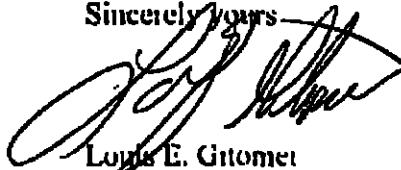
RE Finance Docket No. 35038, *Tulare Valley Railroad Company-Feeder Line
Acquisition-a Line of San Joaquin Valley Railroad Co*

Dear Secretary Williams:

Enclosed for filing in a single document are a Petition for Leave to File Petition
to Reject Application and a Petition to Reject Application Filed under 49 C.F.R. § 1151

Thank you for your assistance. If you have any questions please call or email me.

Sincerely yours,



Louis E. Gitomer
Attorney for San Joaquin Valley Railroad
Company

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35038

TULARE VALLEY RAILROAD COMPANY—FEEDER LINE ACQUISITION—
A LINE OF SAN JOAQUIN VALLEY RAILROAD CO

SAN JOAQUIN VALLEY RAILROAD CO.
PETITION FOR LEAVE TO FILE PETITION TO REJECT APPLICATION
AND PETITION TO REJECT APPLICATION FILED UNDER 49 C.F.R. § 1151

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Dated June 7, 2007

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35038

TULARE VALLEY RAILROAD COMPANY—FEEDER LINE ACQUISITION—
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PETITION FOR LEAVE TO FILE PETITION TO REJECT APPLICATION

San Joaquin Valley Railroad Co. ("SJVR"), pursuant to 49 C.F.R. § 1117.1, petitions the Surface Transportation Board (the "Board") for leave to file a Petition to Reject the Application filed under 49 C.F.R. § 1151 by the Tulare Valley Railroad Company ("TVRC") on May 25, 2007 (the "Application").

The rules at 49 C.F.R. § 1151 do not provide for the filing of a petition to reject, nor do they prohibit such filing. The Board and its predecessor, Interstate Commerce Commission (the "ICC"), have considered petitions to revoke feeder line applications in the past.¹ SJVR has carefully reviewed the Application and the Board's rules and believes that there are grievous defects in the Application that warrant its rejection. For that reason and in an abundance of caution, SJVR requests permission from the Board to file the following Petition to Reject Application filed under 49 C.F.R. § 1151.

¹ *Dr. Daniel R. Fiehler—Feeder Line Application—Line of BNSF Railway Company Between Helena and Great Falls, MT*, STB Finance Docket No. 34947 (STB served November 22, 2006) ("FD 34947") (Motion to Reject considered and application rejected), *Pyco Industries, Inc.—Feeder Line Acquisition—South Plains Switching, Ltd. Co.*, STB Finance Docket No. 34844 ("FD

PETITION TO REJECT APPLICATION FILED UNDER 49 C.F.R. § 1151

I. Background.

TVRC filed the Application under 49 U.S.C. § 10907 on May 25, 2007 pursuant to the rules at 49 C.F.R. § 1151. Through the Application, TVRC seeks to adversely seize SJVR's Exeter Branch, a 39.77-mile line of railroad between Exeter, CA, milepost 259.4, and Jovista, CA, milepost 299.17 (the "Line"). TVRC is contending that it is financially responsible and that the public convenience and necessity permit or require TVRC to acquire the Line.

Prior to filing the Application, TVRC and SJVR were negotiating the purchase and sale of the Line. Instead of negotiating in good faith, TVRC seeks to use the Board's processes to take the Line for substantially less than its fair market value contrary to the statute and embroil SJVR in lengthy and costly litigation based on an incomplete application.

34844") (STB served June 2, 2006) (Motion to Reject considered and application rejected), *New York & Greenwood Lake Railway—Feeder Line Acquisition—a Line Of Norfolk Southern Railway Company*, STB Finance Docket No. 34649 (STB served February 4, 2005) ("FD 34649") (Motion to Reject considered and application rejected), *Forty Plus Foundation/Manhattan Central Railway Systems, LLC—Feeder Line Acquisition—The Manhattan Highline*, STB Finance Docket No. 34606 (STB served January 25, 2005) ("FD 34606") (a Reply seeking rejection was considered and the application rejected), *Keokuk Junction Railway Company—Feeder Line Acquisition—Line of Toledo Peoria and Western Railway Corporation Between La Harpe and Hollis, IL*, STB Finance Docket No. 34335 (STB served May 9, 2003) (Motion to Reject considered and a portion of application rejected), *Kansas Southern Railway Company—Feeder Line Application—Atchison, Topeka and Santa Fe Railway Company*, ICC Finance Docket No. 31823 (ICC served July 9, 1991), *Milford-Bennington Railroad Company, Inc.—Feeder Line Acquisition—Boston and Maine Corporation Hillsborough Branch*, ICC Finance Docket No. 31701 (ICC served October 31, 1991), and *Cheney Railroad Company, Inc.—Feeder Line Acquisition—CSX Transportation, Inc. Line Between Greens and Ivalee, AL*, ICC Finance Docket No. 31012 (ICC served June 2, 1987) considering a motion to reject a competing feeder line application.

The Board's rules at 49 C.F.R. § 1151.2(b)(1) provide for the Director of the Office of Proceedings (the "Director") to accept a substantially complete application. However, the Director is required to reject an incomplete application (49 C.F.R. § 1151.2(b)(2)), unless "required information is primarily or exclusively within the personal knowledge of the owning carrier" and "the applicant files at the same time a request for discovery under 49 CFR part 1114 to obtain the needed information from the owning carrier." 49 C.F.R. § 1151.2(d)(1).

In this proceeding, TVRC filed the Application but has not sought discovery from SJVR to complete the Application. Therefore, the Board must judge the completeness of the Application based on the information provided therein. Since the Application is incomplete and TVRC has not availed itself of the Board's rules to be able to correct the deficiencies in the Application through discovery, SJVR respectfully requests the Board to reject the Application with prejudice.

SJVR also points out that TVRC did not file any verified statements with the Application despite TVRC's burden of presenting a complete application.

SJVR contends that TVRC did not (1) serve the Application on SJVR, as required by 49 C.F.R. § 1104.12 and 49 C.F.R. § 1151.2(a)(1), (2) demonstrate that it is a financially responsible person, as required by 49 C.F.R. § 1151.3(a)(3), (3) provide evidence supporting its proposed valuation of the Line, as required by 49 C.F.R. § 1151.3(a)(4), (4) provide an operating plan, as required by 49 C.F.R. § 1151.3(a)(7), (5) submit evidence of liability insurance, as required by 49 C.F.R. § 1151.3(a)(8), and (6) demonstrate that the public convenience and necessity require the Board to order SJVR to sell the Line to TVRC, as required by 49 C.F.R. § 1151.3(a)(11)(i).

2. TVRC did not serve the Application on SJVR.

The attached verified statements of Larry Gomez and Scott Williams demonstrate that the Application was not served on SJVR. Mr. Gomez has had the records at SJVR's headquarters at 221 N "F" Street, Exeter, CA 93221, searched for a served copy of the Application and none has been found.

Mr. Williams is the Senior Vice President and General Counsel of RailAmerica, Inc. ("RailAmerica"), SJVR's corporate parent, and a corporate officer of SJVR. Mr. Williams is a proper party to receive service on behalf of SJVR. Pursuant to RailAmerica's procedures, the receipt of legal pleading is forwarded to Mr. Williams. Mr. Williams did not receive the Application. Under Mr. Williams' direction, a search of RailAmerica's records and SJVR's records at 5300 Broken Sound Boulevard N.W., Second Floor, Boca Raton, FL 33487, did not uncover a copy of the Application having been served by TVRC. Mr. Williams also checked with the corporate registered agent for SJVR, CT Corporation System, and confirmed that service had not been effected there.

TVRC is required to serve the Application on SJVR as required by 49 C.F.R. §§ 1151.2(a)(1) and 3(a)(16) and 1104.13. TVRC's failure to meet the basic requirements of due process and the Board's regulations requires rejection of the Application.

3. TVRC has not demonstrated that it is a financially responsible person.

"An application must include information sufficient to demonstrate that the applicant is a financially responsible person, able to pay the higher of the net liquidation value (NLV) or going concern value (GCV) of the line and to cover expenses associated with providing service over the line for at least the first 3 years after acquisition of the line."²

² FD 34947, slip op. at 2

TVRC's purported demonstration of financial responsibility is not based on evidence TVRC has not submitted its financial statements, has not submitted a commitment letter or loan agreement from a bank or financial institution, and has not submitted a verified statement from Mr. Kern Shumacher

TVRC submits that it is financially responsible based solely upon the unverified statements in the Application that (a) Mr. Kern Shumacher owns 90 percent of TVRC's stock, (b) that Mr. Shumacher has net worth in excess of \$10 million, and (c) that Mr. Shumacher "guarantees the Applicant's ability to pay the higher of the subject line's going concern value or its net liquidation value and to render adequate transportation on the subject line for a period of not less than three years" [Application at 2]

TVRC's unsupported statement of financial responsibility falls far short of establishing that it is financially responsible

First, there is no evidence of Mr. Shumacher's relation to TVRC. As the Board well knows, a shareholder and a corporation are not the same entity and, unless the corporate veil is pierced, the shareholder is not liable for the liabilities of the corporation.

Second, there is no evidence of Mr. Shumacher's net worth. Mr. Shumacher did not file a verified statement, nor did TVRC file any audited and certified financial statements demonstrating Mr. Schumacher's net worth.

Finally, Mr. Shumacher has not stated that he will guarantee the purchase of the Line. Again, there is no verified statement from Mr. Shumacher and no agreement between Mr. Shumacher and TVRC in the record.

The Board has rejected feeder line applications in the past because the applicant "has not established that it has any financial resources of its own and does not show where or how it

would otherwise obtain these funds. Applicant alludes to several possible sources of income. The mere existence of these programs does not represent a committed source of funds for MCRS, and MCRS has failed to show that funding would be likely for its proposal.”³ TVRC does not provide any evidence that it has any financial resources of its own and therefore cannot demonstrate that it is financially responsible.

In another proceeding, the Board rejected a feeder line application where the applicant had produced a letter from a bank, which is substantially more evidence than TVRC has provided in the Application. The Board stated “PYCO states that Co-Bank of Denver, CO, will provide loan funding sufficient to pay a value greater than the estimated NLV of \$2,094,000 plus operating capital. PYCO includes a letter from Co-Bank supposedly attesting to this. Co-Bank’s letter, however, states only that the bank is the primary lender for PYCO and that ‘PYCO has the financial resources to devote as much as \$5,000,000 towards rail acquisition and operation.’ These statements do not constitute either a loan commitment to PYCO or an assurance that PYCO has sufficient available cash to acquire and operate SAW’s rail lines for at least the first 3 years. Thus, the application is not complete on this issue.”⁴ TVRC has not provided any statement from Mr. Shumacher, much less a commitment of funds.

In rejecting another feeder line application, the Board stated

Dr. Fiehler submits a statement of his net worth from a certified public accountant and apparently assumes that, in view of that net worth, he could obtain commercial loans and revolving lines of credit to support the operation of this rail line. Without a firm commitment from lending sources, however, Dr. Fiehler’s net worth does not establish that he will receive such loans. *See Forty Plus Foundation/Munhattan Central Railway Systems, LLC—Feeder Line Acquisition—The Manhattan Highline*, STB Finance Docket No. 34606, slip op at 4 (STB served Jan. 25, 2005) (*Forty Plus*) (application deficient for failure to provide any details regarding loan sources for operating funds), *PYCO Industries*,

³ FD 34606, slip op. at 4.

⁴ FD 34844, slip op. at 4.

Inc —Feeder Line Acquisition—South Plains Switching, Ltd Co, STB Finance Docket No. 34844, slip op. at 4 (STB served June 2, 2006) (feeder line application by a large commercial enterprise found incomplete for lack of a loan commitment or assurance of sufficient available cash to acquire and operate rail line)⁵

The forced sale of a rail line under the feeder line statute is an extraordinary power granted to the Board. It has been found that an offer to assist in securing financing “fails to demonstrate . . . the ability to cover the purchase price and expense of operation.”⁶ In rejecting a feeder line application on grounds that the applicant had not demonstrated financial responsibility, it was concluded that a loan guarantee is not a loan commitment, but a failure to obtain financing.⁷ TVRC’s evidence does not even reach the level of a loan guarantee. It is mere speculation and inferences that funds might be available.

The Application contains no independent financial information concerning TVRC, the applicant. There is no balance sheet, no income statement, and no cash flow statement, much less any *pro forma* financial statements demonstrating the impact of this acquisition for at least three years into the future. TVRC did not even tell the Board whether it earned a profit in 2006 and how much it earned. Instead, TVRC relies on the claimed financial strength of its purported majority owner, Mr. Shumacher, without any statement of commitment from Mr. Shumacher.

TVRC has not demonstrated its financial responsibility under 49 C.F.R. § 11.513(a)(3). There is no independent evidence of TVRC’s financial responsibility. Nor is there any evidence of Mr. Shumacher’s relation to TVRC, Mr. Shumacher’s net worth, or Mr. Shumacher’s commitment of funds to TVRC to acquire the line and operate it for three years. SJVR urges the Board to reject the Application for failing to demonstrate TVRC’s financial responsibility.

⁵ *FD 34947*, slip op. at 3.

⁶ *Wisconsin & Michigan Railway Company—Feeder Line Application—Wisconsin Central, LTD.*, ICC Finance Docket No. 31939 (ICC served October 9, 1991), slip op. at 2.

⁷ *Wisconsin & Michigan Railway Company—Feeder Line Application—Wisconsin Central, LTD.*, ICC Finance Docket No. 31939 (ICC served December 6, 1991), slip op. at 3.

4 TVRC has not supported its valuation of the Line.

TVRC states that “the subject line has no going concern value” and the NLV “of the line is estimated to be \$968,000 ” [Application at 2] There is no evidence in the Application to support either conclusion contrary to the requirements of 49 C.F.R. 1151.3(a)(4), which requires “An estimate of the NLV and the GCV of the line and evidence in support of these estimates ”

TVRC does not provide the Board with the traffic on the Line, the revenue received on the Line or the cost of operations TVRC is solely to blame for its failure since it has decided not to seek discovery from SJVR Without the above information, at a minimum, there can be no conclusion as to whether the Line has a GCV.

TVRC states that the NLV is based on “the current value of the subject line’s rails, ties and other track materials of \$2,026,100, less removal costs of \$673,500 and the costs of refurbishing the highway crossings and sidewalks of \$384,600 ” [Application at 2-3] There is no justification in the Application for the stated values Moreover, TVRC does not value the real estate based on its unsupported statement that “SJVR does not own the right-of-way ” Again, no justification or evidence is provided for TVRC’s conclusion

Contrary to TVRC’s NLV calculation, SJVR calculates the NLV for track and materials to be \$2,075,789 and Union Pacific Railroad Company, the owner of the underlying right-of-way, calculates the NLV for the real estate to be approximately \$8.3 million, for an aggregate NLV in excess of the \$10 million claimed, but not proven, to be available from Mr. Shumacher

TVRC has failed to produce evidence of the NLV or GCV of the Line, as required by 49 C.F.R. § 1151.3(a)(4) SJVR contends that failure to comply with § 1151.3(a)(4) requires rejection of the Application as incomplete

5 TVRC has not provided an operating plan.

The Board requires a feeder application to contain an operating plan to demonstrate that adequate transportation will be provided for at least three years 49 C F R § 1151.3(a)(7)

TVRC's operating plan is to "render on-demand service in response to reasonable requests from the shippers on the line. If and when the growth of traffic permits, Applicant will render scheduled service " [Application at 3] TVRC does not define "reasonable requests "

The Board has rejected a feeder line application where the operating plan was "sketchy at best " ⁸ That evaluation of an operating plan applies to this proceeding

The Board's rules require "An operating plan that identifies the proposed operator, attaches any contract that the applicant may have with the proposed operator, describes in detail the service that is to be provided over the line, including all interline connections, and demonstrates that adequate transportation will be provided over the line for at least 3 years from the date of acquisition " 49 C F R § 1151.3(a)(7) The operating plan proposed by TVRC is sketchy at best and warrants rejection of the Application as substantially incomplete

TVRC does not provide the physical rail operation over its own rail line Instead, SJVR provided service to over TVRC's line TVRC stated "[TVRC] will contract with an agent to assist in providing rail freight service over the Subject Lines Any such service shall be conducted solely on behalf of, and in the name of, [TVRC] " ⁹ SJVR terminated the agreement to provide operations on behalf of TVRC on May 15, 2006 To the best of SJVR's knowledge, TVRC has not physically operated a train over its line, and may not have the equipment to provide service In light of TVRC's apparent lack of expertise in operating a railroad and the

⁸ FD 34606, slip op at 4

⁹ *Tulare Valley Railroad Company—Acquisition and Operation Exemption—The Atchison, Topeka & Santa Fe Railway Company*, ICC Finance Docket No. 32215 (ICC served July 2, 1993) slip op at 1

history of its commonly controlled railroads,¹⁰ SJVR contends that the board should require a detailed operating plan from TVRC

Because TVRC has provided only a sketchy operating plan, and does not currently provide physical railroad operations, SJVR urges the Board to reject the Application for failure to submit an operating plan, as required by 49 C.F.R. § 1151.3(a)(7)

6. TVRC has submitted no evidence of liability insurance.

TVRC states, again without any evidence, verification, or submission of verifying documents, that it “carries \$5 million of general liability insurance.” [Application at 3] SJVR contends that TVRC has not adequately described the liability insurance as required by 49 C.F.R. § 1151.3(a)(8), and this is another reason that the Application is incomplete and should be rejected

7. TVRC has not demonstrated that the public convenience and necessity require the Board to order SJVR to sell the Line to TVRC.

Where, as here, a rail line is not listed on the owning carrier’s system diagram map as a candidate for a future application for abandonment authority, a feeder line application may be granted only if the Board finds that the PC&N require or permit the sale of the rail line. 49 U.S.C. 10907(b)(1)(A)(i). An application under the PC&N standard must contain detailed evidence that permits the Board to find, in accordance with 49 U.S.C. 10907(c)(1), all of the following

(A) The rail carrier operating the line refused within a reasonable time to make the necessary efforts to provide adequate service to shippers who transport traffic over the line;

(B) The transportation over the line is inadequate for the majority of shippers who transport traffic over the line,

¹⁰ See *SF&L Railway, Inc. Acquisition and Operation Exemption—Toledo, Peoria and Western Railway Corporation Between La Harpe and Peoria, IL*, STB Finance Docket No. 33995 (STB served January 31, 2003) where the Board revoked a notice of exemption and required the reconveyance of the line to the seller because the acquiring party, an affiliate of TVRC, which is controlled by Mr. Kern Shumacher, did not provide service over the line

(C) The sale of the line will not have a significantly adverse financial effect on the rail carrier operating the line,

(D) The sale of the line will not have an adverse effect on the overall operational performance of the rail carrier operating the line, and

(E) The sale of the line will be likely to result in improved railroad transportation for shippers who transport traffic over the line¹¹

As applicant, TVRC has "the burden of proving that the public convenience and necessity require or permit the sale of a particular railroad line is on the person filing the application" [49 U.S.C. § 10907(c)(2)]. The Board has adopted the position that a party must put in all of its evidence in its opening case and not wait for rebuttal.¹² In adopting procedures for processing stand-alone cost rate ("SAC") cases the Board concluded that "Rebuttal may not be used in SAC cases as an opportunity to introduce new evidence that could and should have been submitted in the party's case-in-chief."¹³ Even though those procedures do not specifically apply to feeder line proceedings, they are soundly based in due process and SJVR urges the Board to apply them here.

TVRC has not identified any of the shippers served by SJVR. Nor has TVRC stated how many shippers there are on the Line. In addition, TVRC did not take advantage of the Board's rules and seek discovery of this information.

There is no evidence that SJVR has not provided adequate service over the Line. TVRC states that there is a \$950 per car surcharge and that therefore service must be inadequate. However, TVRC has provided no shipper to support its unfounded claim.

¹¹ FD 34947, slip op. at 4.

¹² See *Duke Energy Corporation v. CSX Transportation, Inc.*, STB Docket No. 42070 (STB served March 25, 2003).

¹³ *General Procedures for Presenting Evidence in Stand-Alone Cost Rate Cases*, STB Ex Parte No. 347 (Sub-No. 3) (STB served March 12, 2001), slip op. at 5.


Not a single shipper on the Line has supported TVRC's Application. There is no evidence supporting TVRC's baseless claim that "A majority of shippers on the subject line deem SJVR's operations to be inadequate" [Application at 4]. The Board has required statements from a majority of shippers on a line to prove inadequate service.¹⁴ TVRC has not provided a statement from a single shipper.

TVRC has failed to meet even the most minimal requirements of demonstrating that the public convenience and necessity require or permit TVRC to acquire the Line from SJVR without SJVR's consent, as required by 49 C.F.R. § 1151.3(a)(11)(i).

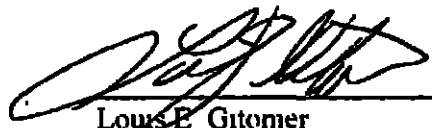
CONCLUSION

SJVR respectfully requests the Board to accept this petition to reject and that the Board reject the Application as incomplete for the reasons stated in this petition.

Respectfully submitted,



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Attorneys for SAN JOAQUIN VALLEY
RAILROAD CO.

Dated June 7, 2007

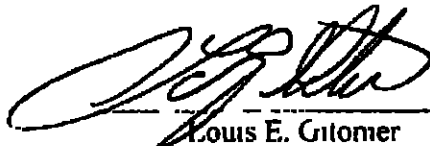
¹⁴ FD 34844, slip op. at 6

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing document to be served by electronic mail
and first-class mail postage pre-paid on the parties of record identified below in STB Finance

Docket No 35038

Fitz R Kahn
Fitz R Kahn PC
1920 N Street NW
8th Floor
Washington, DC 20036-1601



Louis E. Gitomer
June 7, 2007

Before the Surface Transportation Board

Finance Docket No. 35038

TULARE VALLEY RAILROAD COMPANY—FEEDER LINE ACQUISITION—
A LINE OF SAN JOAQUIN VALLEY RAILROAD CO

VERIFIED STATEMENT OF SCOTT G. WILLIAMS

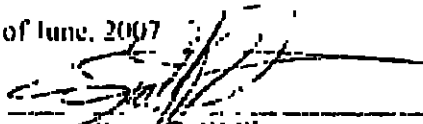
My name is Scott G. Williams. I am the Senior Vice President and General Counsel of RailAmerica, Inc. ("RailAmerica"). As such, I am the chief legal officer of RailAmerica and its railroad subsidiaries.

I am the proper party to receive service on behalf of SJVR. Pursuant to RailAmerica's procedures, legal pleadings are forwarded to me upon receipt by RailAmerica or one of its subsidiary railroads, such as the San Joaquin Valley Railroad Co. ("SJVR"), or by service upon SJVR's corporate registered agent, C F Corporation System. Upon being provided with a copy of the Feeder Line Application filed by the Tulare Valley Railroad Company ("TVRC") from the Surface Transportation Board's web site, I directed a search at RailAmerica, 5300 Broken Sound Boulevard, N.W., Second Floor, Boca Raton, FL 33487, and contacted SJVR's corporate registered agent, C F Corporation System, to determine if a copy of the Application was received. A copy was not found. I did not receive a copy of the Application in the mail or otherwise from the Tulare Valley Railroad Company or its counsel.

VERIFICATION

I, Scott G. Williams, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified

Statement. Executed this 7th day of June, 2007.



Scott G. Williams

Before the Surface Transportation Board

Finance Docket No. 35038

TULARE VALLEY RAILROAD COMPANY--FEEDER LINE ACQUISITION --
A LINE OF SAN JOAQUIN VALLEY RAILROAD CO

VERIFIED STATEMENT OF LARRY GOMEZ

My name is Larry Gomez. I am employed as Director - Marketing and Sales - West Region - Rail Operating Support Group, RailAmerica, Inc. At the direction of Scott G. Williams, Senior Vice President and General Counsel for RailAmerica, Inc. and the San Joaquin Valley Railroad Co. (SVR), I conducted a search of the records of the SVR to determine whether the Feeder Line Application filed by the Tulare Valley Railroad Company (TVRC) had been served on anyone at the SVR at 221 N. "I" Street, Exeter, CA 93221. After a thorough search of SVR's records, I did not find that TVRC had served a copy of the Application on SVR.

VERIFICATION

I, Larry Gomez, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement. Executed this ____ day of June 2007.

Larry Gomez